IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 279 of 1993.

Date of Decision: 12-12-2007.

State of H.P. ……..Appellant.

Versus

Kamla Nand and others. ……..Respondents.

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Hon'ble Mr. Justice Surjit Singh, J.

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? .

For the appellant : Mr. D. S. Nainta, Deputy Advocate General.

For the respondents: Mr. Vinay Thakur, Advocate vice counsel for the respondents.

Surjit Singh, J. (oral)

State has appealed against the judgment of trial Court whereby the respondents, who were charged with and tried for offences punishable under Section 366 read with Section 34, Section 376, 506 and 109 read with Section 366 of the Indian Penal Code, have been acquitted.

A case was registered against the respondents, on the basis of complaint, Exhibit PA, lodged by the prosecutrix with Judicial Magistrate Ist Class, Rohru. In the complaint, which is dated 13-12-1990, it was alleged that five-six months back, respondent No.1 Kamla Nand started visiting the prosecutrix parents' place in the absence of her parents and alluring her that he would marry her and that he being a rich man, she would had a happy and comfortable life. The prosecutrix, who was a minor at that time, (around seventeen years of age) fell prey to the rosy picture painted by respondent No.1 and allowed him to have physical relations

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Whether reporters of the Local papers are allowed to see the judgment? Yes.

with her. Prosecutrix became pregnant because of the coitus with respondent No.1. Thereafter, she asked him to fulfill his promise of marrying her but he started dilly-dallying. It was also stated in the complaint that respondent Kamla Nand was introduced to the prosecutrix by the respondent No.2 Ishwar Singh, who also assured her that Kamla Nand respondent No.1 was a rich man and would be marrying her. When the respondent No.1 after coming to know about the pregnancy of the prosecutrix, gave the indications of ditching the prosecutrix, the latter approached the respondent No.2 Ishwar Singh, who brought her to Shimla where the respondent No.1 was employed those days. These two respondents kept her in different Hotels at Shimla for about seven-eight days and both of them had been having sexual intercourse with her by threatening/blackmailing her. Then the two respondents started compelling the prosecutrix to get the pregnancy terminated. She was not ready for this, so one day on getting a chance, she escaped from the Hotel and went to her parents' house. A few days thereafter, respondents No.3 and 4 reached the house of the prosecutrix and started threatening her that in case she did not get the pregnancy terminated, she would be killed.

The matter was investigated by the Police. It was found that the prosecutrix was around seventeen years of age at the time when she was subjected to the first alleged act of coitus and that at the time of her medical examination she was carrying pregnancy of twenty-eight weeks. On completion of investigation, the Police challaned all the respondents. Trial Court charged them with the aforesaid offences and ultimately acquitted them, as aforesaid.

Reasons recorded by the trial Court for acquitting the respondents are that the testimony of the prosecutrix does not inspire confidence and also it is not corroborated by other witnesses, including her father, brother

and sister-in-law. Trial Court also observed that from the facts and circumstances of the case it appeared that the prosecutrix was consenting party to the alleged acts of intercourse.

We have heard the learned Deputy Advocate General and perused the record.

We find a number of major contradictions in the testimony of the prosecutrix, who was examined as PW1, and complaint Exhibit PA which she submitted to the Judicial Magistrate Ist Class, Rohru. In the complaint she alleged that she developed physical intimacy with the respondent No.1 Kamla Nand on being assured by respondent No.2 Ishwar Singh that former would marry her. However, while in the witness box, she did not say so. She simply stated that respondent No.1 was a frequent visitor to the house of the respondent No.2 and that since the house of respondent No.2 is in the neighborhood of the house of her father he (respondent No.1) also used to visit her father's house in the absence of her parents and developed physical intimacy with her, on false assurance that he would be marrying her. Again in the complaint, she got recorded that she was kept in various Hotels at Shimla by the two respondents for seven-eight days but in the witness box, she stated that she was kept at Shimla for about a month. Further, in the complaint she got recorded that both the accused had been subjecting her to sexual intercourse at Shimla by threatening her but in the testimony she stated that while the respondent No.1 had been sleeping with her in the night and subjecting her to sexual intercourse, respondent No.2 had been having sexual intercourse with her during day time by blackmailing her that he would be informing her father about her illicit relations with respondent No.1 in case she did not fulfill his desire for sexual intercourse. Further, in the complaint Exhibit PA she stated that on getting a chance she escaped from the captivity of the respondents, after the respondents started pressurizing her for termination

of the pregnancy and reached her father's place, but while in the witness box, she stated that she was taken to a Lady Doctor who after her check up told that the termination of pregnancy was not possible as her foetus was twenty four to twenty six week old.

The aforesaid contradictions in Exhibit PA and the testimony of the prosecutrix in the Court suggest that the story of kidnapping and rape is a cooked up one and that in fact, the prosecutrix had been having sexual intercourse with respondent No.1 with her consent and came to Shimla and remained with him for about a month of her own free will. This view of ours is further strengthened by the fact that complaint Exhibit PA which is dated 13th December, 1990 was lodged only after respondent No.2 to 4 made a complaint against the brother of the prosecutrix and the Investigating Officer of the case, namely Besar Singh (PW19) that they had beaten them up. Besar Singh (PW19) has admitted that on 11-12-1990, a complaint had been filed against him and the brother of the prosecutrix by respondents No. 2 to 4. This fact not only shows that the present case is a counter blast to the complaint filed by the respondent No.2 to 4 against the brother of the prosecutrix and Besar Singh (PW19) but also shows that the investigation of the case might not have been fair. As a matter of fact, Besar Singh who had been accused of offence of beating, prior to the lodging of the complaint Exhibit PA ought not to have investigated the case.

The respondent No.2 took the plea that he is a collateral of the prosecutrix and that when the father of the prosecutrix came to know that she was carrying pregnancy, he gave him Rs. 700/- and requested him to bring the prosecutrix to Shimla to get the pregnancy terminated and that he being a relative of the prosecutrix' further brought the prosecutrix to Shimla, took her to a Lady Doctor, but when the Lady Doctor after examining the prosecutrix told that the pregnancy was twenty four to

twenty six weeks old and termination was not possible, he took her back to the village, long before the lodging of the complaint Exhibit PA. The plea is probablised by the testimony of the prosecutrix to the effect that she was taken to a Lady Doctor, who told that termination of pregnancy at that belated stage was impossible. The plea is further corroborated by the fact that the complaint Exhibit PA was lodged long after the prosecutrix returned to her father's place. It is also corroborated by the fact that despite the prosecutrix having remained absent from her father's place for about a month when she was at Shimla, no report was lodged with the Police by her father or for that matter any other member of his family. The conduct of the prosecutrix also supports this view. When she was taken to the Lady Doctor, she did not tell her about the alleged acts of rape being committed on her by the two respondents in different Hotels at Shimla.

For the foregoing reasons, we find no merit in the appeal and therefore the same is dismissed.

(Surjit Singh)
Judge.

(Surinder Singh)
Judge.

December 12, 2007.
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